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REMARKS

Applicants have amended claims 1, 24, 47, and 70 to require the first thermoplastic substrate and second thermoplastic substrate to independently be selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon. Support for these amendments can be found in the original dependent claims 16-22, 39-45, 62-68, and 85-91 and in the instant specification on page 9, paragraph 24. Additionally, Applicants have canceled claims 17, 19, 22, 40, 42, 45, 63, 65, 68, 86, 88, and 91. After entry of this Amendment A, claims 1-16, 18, 20-21, 23-39, 41, 43-44, 46-62, 64, 66-67, 69-85, 87, 89-90, and 92 will be pending in this case. No new matter has been added by these amendments. Applicants respectfully request reconsideration and allowance of all pending claims.

1. Rejection of Claims 1-10, 13, 16, 17, 19, 22-33, 36, 39, 40, 42, 45-56, 59, 62, 63, 65, 68-79, 82, 85, 86, 88, and 91-92 Under 35 U.S.C. §102(b)

Reconsideration is requested of the rejection of claims 1-10, 13, 16, 17, 19, 22-33, 36, 39, 40, 42, 45-56, 59, 62, 63, 65, 68-79, 82, 85, 86, 88, and 91-92 under 35 U.S.C. §102(b) as being anticipated by Zhou et al. (U.S. 6,774,069).

Claim 1, as amended herein, is directed to an article comprising an ultrasonically bonded laminated structure. The laminated structure comprises a first thermoplastic material selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and a second thermoplastic material selected from the group consisting of polyethylene, polyester,

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polylactic acid, and nylon, and an adhesive composition. The adhesive composition comprises an atactic polymer and an isotactic polymer. The atactic polymer has a degree of crystallinity of less than about 20% and a number-average molecular weight of from about 1,000 to about 300,000. The isotactic polymer has a degree of crystallinity of at least about 40% and a number-average molecular weight of from about 3,000 to about 200,000. The first thermoplastic material and the second thermoplastic material are compatible thermoplastic materials and are ultrasonically bonded together.

Zhou et al. ('069) disclose hot-melt adhesive compositions of atactic polypropylene and isotactic polypropylene that are particularly suitable for bonding non-woven elastic strands to various non-woven substrates and non-woven elastic laminate to another non-woven elastic laminate. Specifically, the adhesive composition comprises an atactic polypropylene having a degree of crystallinity of about 20% or less, a number-average molecular weight of from about 500 to about 40,000, and a molecular weight distribution index in the range of 2 to 10, and an isotactic polypropylene having a degree of crystallinity of about 40% or more, a number-average molecular weight of from about 3,000 to about 150,000, and a molecular weight distribution index in a range of 2 to 8.

Additionally, the '069 reference discloses elastic composite laminated structures employing the adhesive compositions. The laminated structures comprise a first layer and a second layer, which may comprise a variety of materials, including, non-woven materials and elastic components. Preferable materials include polyurethane, styrene-isoprene

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styrene, styrene-butadiene-styrene, styrene-ethylene/propylene-styrene, or styrene/ethylene-co-butadiene/styrene. The adhesive composition can also be used to bond an elastomeric laminate such as a necked-bonded laminate (NBL) to a non-elastic substrate such as a spunbond-meltblown-spunbond (SMS) laminate.¹ Additionally, the adhesive composition can bond one non-woven elastomeric laminate to another non-woven elastomeric laminate. Examples of this include a NBL bonded to another NBL, or an NBL to a polypropylene spunbonded layer, or a stretch-bonded laminate (SBL)² to another SBL, or a SBL to a spunbonded layer, or a spunbonded layer to another spunbonded layer. Additionally, the '069 reference discloses that the resulting laminated materials may be passed through an ultrasonic bonding unit to form a seal or side seam.

Significantly, the '069 reference fails to specifically disclose a laminated structure comprising a first thermoplastic material and a second thermoplastic material that are compatible thermoplastic materials, ultrasonically bonded together with an adhesive composition, wherein the first thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and the second

¹ As defined in '069, a necked-bonded laminate generally comprises a metallocene-catalyzed polyethylene layer sandwiched between two polypropylene, spunbonded layers. Column 7, lines 60-62. Additionally, a spunbond-meltblown-spunbond laminate generally comprises a plurality of meltblown fibers sandwiched between two polypropylene spunbonded layers. Column 8, lines 3-5.

² As defined in '069, a stretch-bonded laminate generally comprises an elongated elastic web or elastomeric strands bonded between two spunbond layers. Column 8, lines 16-19.

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thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon. These are requirements of amended claim 1 and are significant aspects of Applicants' invention. Although the '069 reference does disclose the bonding of a polypropylene layer to another polypropylene layer (for example an NBL to another NBL), it does not specifically disclose the compatible materials of amended claim 1.

As stated in M.P.E.P. §2131, a claim is anticipated only if each and every element of the claim is described in the prior art reference. As stated above, the '069 reference fails to disclose a first thermoplastic material and a second thermoplastic material that are compatible thermoplastic materials, wherein the first thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and the second thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon as required by claim 1. As such, the '069 reference fails to teach each and every limitation of instant claim 1. As such, claim 1 is novel and patentable over the cited reference.

Claims 2-10, 13, 16, and 23 depend directly or indirectly from claim 1. As such, claims 2-10, 13, 16, and 23 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

Claim 24 is similar to claim 1 and is further directed to the process for manufacturing the article comprising an ultrasonically bonded laminated structure. Specifically, the process comprises providing a first thermoplastic substrate

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comprising an adhesive composition; providing a second thermoplastic substrate compatible with the first thermoplastic substrate; and ultrasonically bonding the first thermoplastic substrate to the second thermoplastic substrate. As in claim 1, the first thermoplastic substrate is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon and the second thermoplastic substrate is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon. As the '069 reference fails to disclose a first thermoplastic material and a second thermoplastic material that are compatible thermoplastic materials, wherein the first thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and the second thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, the '069 reference fails to teach each and every limitation of instant claim 24. As such, claim 24 is novel and patentable over the cited reference.

Claims 25-33, 36, 39, and 46 depend directly or indirectly from claim 24. As such, claims 25-33, 36, 39, and 46 are patentable for the same reasons as claim 24 set forth above, as well as for the additional elements they require.

Claim 47 is similar to claim 24 and further requires introducing the adhesive composition onto the first or the second thermoplastic substrate and contacting the first and second substrate together to form an adhesive bond therebetween. As such, claim 47 is patentable over the '069 reference for the same reasons as claim 24 set forth above, as well as for the additional elements it requires.

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Claims 48-56, 59, 62, and 69 depend directly or indirectly from claim 47. As such, claims 48-56, 59, 62, and 69 are patentable for the same reasons as claim 47 set forth above, as well as for the additional elements they require.

Claim 70 is similar to claim 1 and further requires the adhesive composition to have an open time of less than about 10 minutes. As such, claim 70 is patentable over the '069 reference for the same reasons as claim 1 set forth above, as well as for the additional elements it requires.

Claims 71-79, 82, 85, and 92 depend directly or indirectly from claim 70. As such, claims 71-79, 82, 85, and 92 are patentable for the same reasons as claim 70 set forth above, as well as for the additional elements they require.

2. Rejection of Claims 1-17, 19, 22-40, 42, 45-63, 65, 68-86, 88, and 91-92 Under 35 U.S.C. §102(b)

Reconsideration is requested of the rejection of claims 1-17, 19, 22-40, 42, 45-63, 65, 68-86, 88, and 91-92 under 35 U.S.C. §102(b) as being anticipated by Zhou et al. (U.S. Application No. 2002/0123538A1).

Amended claim 1 is discussed above.

Zhou et al. ('538) disclose adhesive compositions comprising selected ratios of crystalline and amorphous polymers. Specifically, one adhesive composition of the invention comprises an atactic polymer having a degree of crystallinity of about 20% or less and a number-average molecular weight of from about 1,000 to about 300,000, and an isotactic polymer having a degree of crystallinity of about 40% or more and a number-average molecular weight of from about

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3,000 to about 200,000.

Additionally, the '538 reference discloses laminated structures employing the adhesive compositions. The laminated structures comprise a first layer and a second layer, which may comprise a variety of materials, including, non-woven materials, film, woven materials, cellulosic material, thermoplastic material, elastic components, and combinations thereof. Example substrates bonded using the adhesive composition include: a necked-bonded laminate (NBL), a polypropylene, spunbonded layer, and an outercover comprising a polyethylene layer and a polypropylene, spunbonded layer. Additionally, the '538 reference discloses that the resulting laminated materials may be passed through an ultrasonic bonding unit to form a side seam or seal.

Significantly, the '538 reference fails to disclose a laminated structure comprising a first thermoplastic material and a second thermoplastic material that are compatible thermoplastic materials, ultrasonically bonded together with an adhesive composition, wherein the first thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and the second thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon. These are requirements of amended claim 1 and are significant aspects of Applicants' invention.

As noted above, for a claim to be anticipated, M.P.E.P. §2131 requires each and every element of the claim to be described in a prior art reference. As stated above, the '538 reference fails to disclose a first thermoplastic material and a

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second thermoplastic material that are compatible thermoplastic materials, wherein the first thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and the second thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon as required by claim 1. As such, the '538 reference fails to teach each and every limitation of instant claim 1. As such, claim 1 is novel and patentable over the cited reference.

Claims 2-16 and 23 depend directly or indirectly from claim 1. As such, claims 2-16 and 23 are patentable for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

Claim 24 is similar to claim 1 and is discussed above. As such, claim 24 is novel and patentable over the cited reference for the same reasons as claim 1 set forth above, as well as for the additional elements it requires.

Claims 25-39 and 46 depend directly or indirectly from claim 24. As such, claims 25-39 and 46 are patentable for the same reasons as claim 24 set forth above, as well as for the additional elements they require.

Claim 47 is similar to claim 24 and is discussed above. As such, claim 47 is patentable over the '069 reference for the same reasons as claim 24 set forth above, as well as for the additional elements it requires.

Claims 48-62 and 69 depend directly or indirectly from claim 47. As such, claims 48-62 and 69 are patentable for the same reasons as claim 47 set forth above, as well as for the additional elements they require.

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Claim 70 is similar to claim 1 and is discussed above. As such, claim 70 is patentable over the '069 reference for the same reasons as claim 1 set forth above, as well as for the additional elements it requires.

Claims 71-85 and 92 depend directly or indirectly from claim 70. As such, claims 71-85 and 92 are patentable for the same reasons as claim 70 set forth above, as well as for the additional elements they require.

3. Rejection of Claims 11-12, 14-15, 18, 20, 21, 34-35, 37-38, 41, 43, 44, 57-58, 60-61, 64, 66, 67, 80-81, 83-84, 87, 89, and 90 Under 35 U.S.C. §103(a)

Reconsideration is requested of the rejection of claims 11-12, 14-15, 18, 20, 21, 34-35, 37-38, 41, 43, 44, 57-58, 60-61, 64, 66, 67, 80-81, 83-84, 87, 89, and 90 under 35 U.S.C. §103(a) as being unpatentable over Zhou et al. (U.S. 6,774,069; U.S. Patent Application No. 2002/0123726A1).

Claims 11-12, 14-15, 18, 20, 21 depend directly or indirectly on claim 1, which is discussed above. Claim 1 is patentable for the reasons set forth above. In particular, the '069 reference fails to disclose a first thermoplastic material and a second thermoplastic material that are compatible thermoplastic materials, wherein the first thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and the second thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon.

In order for the Office to show a prima facie case of obviousness, M.P.E.P. §2143 requires that the Office must meet

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three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has failed to meet its burden under number (1) and/or (2) above, as '069 fails to show each and every limitation of Applicants' invention and there is no motivation or suggestion to modify '069 to arrive at each and every limitation.

As noted above, '069 fails to disclose a first thermoplastic material and a second thermoplastic material that are compatible thermoplastic materials, wherein the first thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and the second thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon. Further, '069 fails to suggest or disclose any motivation to one skilled in the art to modify its laminated structures employing its adhesive compositions to comprise a first thermoplastic material and a second thermoplastic material that are compatible thermoplastic materials, wherein the first thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and the second thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon.

The '069 reference teaches that laminate structures can be made using its adhesive compositions to bind a first layer and

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second layer; and even provides several commercially acceptable materials for use in the first and second layers of the laminate structures. The '069 reference fails to provide a reason why one skilled in the art would choose different materials for the first and second layers of the laminates over those provided in the reference. Specifically, nowhere is there motivation or suggestion to use a first and second layer that are compatible and are selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon. By contrast, as noted above, the only laminated substrates disclosed in the '069 reference are made by bonding a polypropylene layer to a polypropylene layer as in the NBL bonded to another NBL, or an NBL bonded to a SMS laminate, or an NBL bonded to a polypropylene spunbonded layer, or an elastomeric component to a spunbonded layer.³

With all due respect, it appears that the Office has used impermissible hindsight analysis and reconstruction when modifying the '069 reference. Notably, it would be clear to one skilled in the art reading '069 that thermoplastic polymers can be bonded with the adhesive compositions to make the laminated substrates described herein. There are, however, a myriad of thermoplastic polymers, many of which are used in laminated substrates. What is important is that there is no motivation or suggestion to use the compatible thermoplastic polymers of amended claim 1 over any of the other enormous number of

³ See also '069 at Examples 1 and 3-4. Specifically, Example 1 uses laminates comprising a NBL bonded to a SBL or a NBL to a SMS. Examples 3-4 use laminates comprising an elastomeric component bonded to a polypropylene spunbonded layer.

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thermoplastic polymers described in the art.

There is simply no motivation to modify '069 to arrive at the amended claim 1, and claims 11-12, 14-15, 18, 20, 21, which depend on claim 1, cannot be said to be obvious in view of the cited reference.

Claims 34-35, 37-38, 41, 43, and 44 depend directly or indirectly on claim 24. As discussed above, claim 24 is similar to claim 1. As such, claim 24 and claims 34-35, 37-38, 41, 43, and 44, which depend on claim 24, are patentable over the '069 reference for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

Claims 57-58, 60-61, 64, 66, and 67 depend directly or indirectly on claim 47. As discussed above, claim 47 is similar to claim 24. As such, claim 47 and claims 57-58, 60-61, 64, 66, and 67, which depend on claim 47, are patentable over the '069 reference for the same reasons as claim 24 set forth above, as well as for the additional elements they require.

Claims 80-81, 83-84, 87, 89, and 90 depend directly or indirectly on claim 70. As discussed above, claim 70 is similar to claim 1. As such, claim 70 and claims 80-81, 83-84, 87, 89, and 90, which depend on claim 70, are patentable over the '069 reference for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

4. Rejection of Claims 18, 20, 21, 41, 43, 44, 64, 65, 67, 87, 89, and 90 Under 35 U.S.C. §103(a)

Reconsideration is requested of the rejection of claims 18, 20, 21, 41, 43, 44, 64, 66, 67, 87, 89, and 90 Under 35 U.S.C. §103(a) as being unpatentable over Zhou et al. (U.S. Application

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No. 2002/0123538A1).

Claims 18, 20, 21 depend directly or indirectly on claim 1, which is discussed above. Claim 1 is patentable for the reasons set forth above. In particular, the '538 reference fails to disclose a first thermoplastic material and a second thermoplastic material that are compatible thermoplastic materials, wherein the first thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and the second thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon.

As noted above, in order for the Office to show a *prima facie* case of obviousness, M.P.E.P. §2143 requires that the Office must meet three criteria: (1) the prior art reference must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference, and (3) there must be some reasonable expectation of success. The Office has clearly failed to meet its burden under number (1) and/or (2) above, as '538 fails to show each and every limitation of Applicants' invention and there is no motivation or suggestion to modify '538 to arrive at each and every limitation.

As noted above, '538 fails to disclose a first thermoplastic material and a second thermoplastic material that are compatible thermoplastic materials, wherein the first thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and the

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second thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon. Further, '538 fails to suggest or disclose any motivation to one skilled in the art to modify its laminated structures employing its adhesive compositions to comprise a first thermoplastic material and a second thermoplastic material that are compatible thermoplastic materials, wherein the first thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon, and the second thermoplastic material is selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon.

Similar to the '069 reference above, the '538 reference simply teaches that laminate structures can be made using its adhesive compositions to bind a first layer and second layer; and provides several commercially acceptable materials for use in these layers of the laminate structures. The '538 reference, like the '069 reference, fails to provide a reason why one skilled in the art would choose different materials for the first and second layers of the laminates over those provided in the reference. Specifically, no where is there motivation or suggestion to use a first and second layer that are compatible and are independently selected from the group consisting of polyethylene, polyester, polylactic acid, and nylon. The only laminated substrates disclosed in the '538 reference are made by bonding a polypropylene layer to a polypropylene layer as in the NBL bonded to another NBL, or an NBL bonded to a polypropylene spunbonded layer, or a NBL or polypropylene spunbonded layer to a outercover comprising a polyethylene layer and a

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polypropylene, spunbonded layer.⁴

With all due respect, it appears that the Office has used impermissible hindsight analysis and reconstruction when modifying the '538 reference. Notably, it would be clear to one skilled in the art reading '538 that thermoplastic polymers can be bonded with the adhesive composition to make the laminated substrates described herein. There are, however, a myriad of thermoplastic polymers, many of which are used in laminated substrates. What is important is that there is no motivation or suggestion to use the compatible thermoplastic polymers of amended claim 1 over any of the other enormous number of thermoplastic polymers described in the art.

There is simply no motivation to modify '538 arrive at the amended claim 1, and claims 18, 20, and 21, which depend on claim 1, cannot be said to be obvious in view of the cited reference.

Claims 41, 43, and 44 depend directly or indirectly on claim 24. As discussed above, claim 24 is similar to claim 1. As such, claim 24 and claims 41, 43, and 44, which depend on claim 24, are patentable over the '538 reference for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

Claims 64, 66, and 67 depend directly or indirectly on claim 47. As discussed above, claim 47 is similar to claim 24.

⁴ See also '538 at Examples 2 and 3-6. Specifically, Example 2 uses laminates comprising a NBL bonded to a NBL. Example 3 uses laminates comprising two polypropylene, spunbonded substrates together. Examples 4-5 use laminates comprising a NBL bonded to an outercover material. Example 6 uses laminates comprising a NBL bonded to a SBL.

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As such, claim 47 and claims 64, 66, and 67, which depend on claim 47, are patentable over the '538 reference for the same reasons as claim 24 set forth above, as well as for the additional elements they require.

Claims 87, 89, and 90 depend directly or indirectly on claim 70. As discussed above, claim 70 is similar to claim 1. As such, claim 70 and claims 87, 89, and 90, which depend on claim 70, are patentable over the '538 reference for the same reasons as claim 1 set forth above, as well as for the additional elements they require.

5. Rejection of Claims 1-92 for Obviousness Type Double Patenting

Claims 1-92 have been rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-70 of U.S. Patent No. 6,774,069. In response thereto, Applicants have enclosed herewith a Terminal Disclaimer in accordance with 37 C.F.R. 1.130(b) and 37 C.F.R. 1.321(c) to obviate the rejection. Accordingly, Applicants respectfully request the obviousness-type double patenting rejection be withdrawn.

6. Rejection of Claims 1-92 for Obviousness Type Double Patenting

Claims 1-92 have been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of co-pending U.S. Patent Application No. 10/744,332. In response thereto,

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Applicants have enclosed herewith a Terminal Disclaimer in accordance with 37 C.F.R. 1.130(b) and 37 C.F.R. 1.321(c) to obviate the rejection.⁵ Accordingly, Applicants respectfully request the obviousness-type double patenting rejection be withdrawn.

7. Rejection of Claims 1-92 for Obviousness Type Double Patenting

Claims 1-92 have been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-104 of co-pending U.S. Patent Application No. 10/743,222. In response thereto, Applicants have enclosed herewith a Terminal Disclaimer in accordance with 37 C.F.R. 1.130(b) and 37 C.F.R. 1.321(c) to obviate the rejection. Accordingly, Applicants respectfully request the obviousness-type double patenting rejection be withdrawn.

8. Rejection of Claims 1-92 for Obviousness Type Double Patenting

Claims 1-92 have been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-97 of co-pending U.S. Patent Application No. 10/260,951. In response thereto, Applicants:

⁵ Under M.P.E.P. §804.02, Applicants have provided a single terminal disclaimer to overcome the provisional obviousness type double patenting rejections over co-pending U.S. Patent Application Nos. 10/260,951, 10/743,222, 10/744,332, and 10/945,239.

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have enclosed herewith a Terminal Disclaimer in accordance with 37 C.F.R. 1.130(b) and 37 C.F.R. 1.321(c) to obviate the rejection. Accordingly, Applicants respectfully request the obviousness-type double patenting rejection be withdrawn.

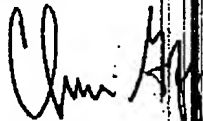
9. Rejection of Claims 1-92 for Obviousness Type Double Patenting

Claims 1-92 have been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-59 of co-pending U.S. Patent Application No. 10/945,239. In response thereto, Applicants have enclosed herewith a Terminal Disclaimer in accordance with 37 C.F.R. 1.130(b) and 37 C.F.R. 1.321(c) to obviate the rejection. Accordingly, Applicants respectfully request the obviousness-type double patenting rejection be withdrawn.

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In view of the above, Applicants respectfully request favorable reconsideration and allowance of all pending claims. The Commissioner is hereby authorized to charge any fee deficiency in connection with this Amendment A to Deposit Account Number 19-1345 in the name of Senniger Powers.

Respectfully Submitted,



Christopher M. Goff, Reg. No. 41,785
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
314-231-5400

CMG/JMB/dhm

Via Facsimile (571) 273-8300

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